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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1926.

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No. 719.

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MAMMOTH OIL COMPANY, SINCLAIR CRUDE OIL PURCHASING COMPANY AND SINCLAIR PIPE LINE COMPANY, *Petitioners*,

*vs.*

UNITED STATES OF AMERICA, *Respondent*.

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## BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI.

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### I.

### STATEMENT OF THE CASE.

It is unnecessary to make an extended statement of the issues presented by this petition for certiorari because they are precisely the same as those presented by the pending appeal of the *Pan American Petroleum and Transport Company and Pan American Petroleum*

*Company, Petitioners vs. United States of America, Respondent, No. 305,* on the docket of this Court, which was argued and submitted on October 5, 1926. The only different question which would be presented if the cause were heard on its merits relates to the law of evidence, involving principles which are well settled and which the Court of Appeals correctly applied.

Counsel for Respondent will therefore present the facts and the questions of law involved in a very summary way, simply to show the similarity of the issues to those involved in said Pan American Petroleum and Transport Company appeal, and to show that no public interest requires consideration of this cause upon its merits and that no legal rights of the Petitioners will be disregarded by denying their petition.

The order of the Court of Appeals in conformity with the prayer of the Bill in Equity declares null and void a certain lease and a certain contract supplemental thereto, between the Mammoth Oil Company and Respondent, pertaining to Naval Petroleum Reserve No. 3, Wyoming, commonly known as Teapot Dome; directs said Mammoth Oil Company and the other petitioners who derive all their rights through the Mammoth Oil Company to account to the United States for the value of all oil and other petroleum products extracted by them under said lease and contract and directs the Petitioners to cease trespassing upon said Teapot Dome.

The lease is an agreement dated April 7, 1922, whereby Respondent demised to Mammoth Oil Company all of Teapot Dome, subject to royalties in the form of stipulated percentages of petroleum products and sold to it the royalty oils accruing thereunder and in consideration thereof said Mammoth Oil Company

agreed to exploit said territory, to issue certificates representing the value of the royalty oils thus sold to construct a pipe line upon said territory, and to construct fuel oil storage tanks at various points on the Atlantic seaboard to be later designated by Respondent. The Mammoth Oil Company agreed to take said oil certificates in payment for storage so constructed.

The second and supplemental agreement is dated February 9, 1923, and designates the location and capacity of the storage facilities which said Mammoth Oil Company should construct in accordance with the lease agreement of April 7, 1922.

It is therefore plain that the lease and contract involved in this suit are the same in principle as the contracts and lease involved in the said Pan American Petroleum and Transport Company appeal. Differences are only in minor detail.

The issues presented by the pleadings and the evidence are naturally to be grouped under three headings as was done in the opinion of the Court of Appeals: First, were the lease of April 7, 1922 and the supplemental agreement of February 9, 1923, procured by fraud and the result of a conspiracy between Albert B. Fall, then Secretary of the Interior, and Harry F. Sinclair, owner of the Mammoth Oil Company? Second, was there authority of law to make the said lease and the said supplemental agreement and were they made in compliance with law? Third, must the Petitioners cease to trespass upon Teapot Dome and account for all petroleum products taken therefrom without credit for their expenditures?

## II.

## ARGUMENT.

### A. The Lease of April 7, 1922, and the supplemental agreement of February 9, 1923, are voidable because procured by fraud.

The trial court concluded there was no fraud or conspiracy to defraud involved in the procurement of said lease and agreement. The Court of Appeals concluded exactly the opposite. The Court of Appeals said in its opinion (Record, pages 817-818) that fraud is not to be presumed, but must be established by clear, unequivocal and convincing evidence; that circumstantial evidence may be sufficient; that inferences of fact cannot be drawn from other inferences or rebuttable presumptions but must arise from circumstances proved; and that where the trial court has considered conflicting evidence and passed thereon its conclusion is entitled to great weight and, unless in the opinion of the appellate court it is against the weight of the evidence or is based upon a mistake, will not be disturbed.

But the Court of Appeals said in its opinion (Record, pages 817-818) that the views of the trial court are not controlling because this appeal does not present so much a dispute as to the evidence or the veracity of witnesses as it does an opportunity for differences of opinion with respect to the inferences to be drawn from all the circumstances appearing in the record; that the conclusion of the trial court is a mixed one of law and fact; and that an appellate court has the same right to draw conclusions from the silence or evasiveness of witnesses and to apply the law to undisputed

or clearly proven facts as has the trial court. In the opinion, (Record, pages 844-845), it is said:

> "Of course, a plaintiff in a case cannot insist that defendant must furnish evidence he may have or permit plaintiff to succeed, and there must be affirmative proof of facts prima facie at least to sustain plaintiff's contentions before inferences can be properly drawn. The language used by some courts is that there must be something laid at defendant's door. As before indicated, we are of the opinion that that situation existed here."

Thus in approaching its conclusion the Court of Appeals recognized all the principles of law contended for by Petitioners in their brief attached to the petition for certiorari. When this Court has read the opinion of the Court of Appeals and observed the careful consideration given to all the facts, all of which are thoroughly established by evidence in the record, counsel for Respondent do not believe this Court will find any mistake of law as to fraud and conspiracy or care to go into the proofs. This Court has said in *United States vs. Johnston (1925)*, 268 U. S. 220, p. 227, "We do not grant a writ of certiorari to review evidence and discuss specific facts."

The chronology of facts upon which the Court of Appeals based its conclusion that the lease and contract were procured by fraud and are the result of a conspiracy to defraud the United States, all of which are proved beyond doubt by evidence in the record may be summarized as follows:

At all times covered by the Bill the policy of the United States Government was to preserve in the ground all possible petroleum and petroleum products and to lease only such offset strips as were necessary

for protection against drainage. On May 31, 1921, by presidential Executive Order the administration of Naval Petroleum Reserves, vested by law in the Secretary of the Navy was, with the ready consent of Secretary of the Interior, Albert B. Fall, transferred to him. He thereafter proclaimed his policy in a letter of July 8, 1921, to his friend, Edward L. Doheny, to be to handle leases of lands in Naval Petroleum Reserves himself without consultation with anyone in the Navy Department except that on questions of policy he said he would consult the Secretary of the Navy himself. On July 23, 1921, Secretary Fall originated the idea of exchanging oil for tankage in which to store fuel oil.

On November 30, 1921, January 12, 1922, January 27, 1922, and February 18, 1922, reports were made by geologists in the Department of the Interior pursuant to investigations made by them, to Fall that Teapot Dome was in no immediate danger of drainage and that no leasing need be done for protection against drainage. October 25, 1921, the Secretary of the Navy advised Fall that Teapot Dome should only be developed as it became necessary for protection against drainage and entrusted discretion in the matter to Fall without reservation of any supervision. Copies of any leases which should be made were to be furnished to the Navy Department for information and record only, thereby indicating an abdication of all responsibility. October 30, 1921, Fall agreed to the policy.

On December 31, 1921, Sinclair and his counsel visited Fall at Three Rivers, New Mexico, and discussed the possibility of obtaining a lease of Teapot Dome. On January 27, 1922, Admiral Robison, a Naval administrative officer under the domination of Fall, and at the

request of Fall, advised Secretary of the Navy Denby that all of Teapot Dome must be leased to prevent drainage of oil contained therein and in reliance upon these false representations Secretary Denby agreed to lease the entire area. Fall and Sinclair had been in frequent conference and, almost immediately after the decision to lease the entire Teapot Dome, on February 3, 1922, Sinclair submitted his proposition for a lease and Fall instructed his subordinates to prepare a draft of a contract.

Fall made the acquisition of certain alleged claims known to him to be illegal and dead and the quit-claiming of same to the Government a condition precedent to a lease. Sinclair acquired these claims subject to the final award of a lease to him and on March 11, 1922, the Mammot Oil Company, having been organized by him the final proposition of it for a lease was submitted. April 7, 1922, the lease was signed by Fall as Secretary of the Interior and "for the Secretary of the Navy." As an afterthought the signature of the Secretary of the Navy was obtained before the delivery of the lease.

Fall knew that eminent attorneys for several large oil companies had expressed opinions that the plan of exchanging royalty crude oil from naval petroleum reserves for storage tankage and other considerations was illegal and beyond the authority of any officer of the Government. In utter disregard of the doubts which such opinions should have engendered in his mind, he nevertheless proceeded to make such lease and agreement without at any time obtaining either the opinion of the Solicitor of the Department of the Interior or the opinion of the Attorney General of the

United States. The only excuse offered for such conduct was that the Judge Advocate General of the Navy had approved of the legality of such a plan. But the opinion of the Judge Advocate General was given before such opinions were expressed by eminent attorneys and without consideration of the argument in their opinions.

No public notice of an intention to lease any part, let alone all, of Teapot Dome was given. Many applicants for leases, newspaper representatives and members of the Senate and House of Representatives of the United States were advised even after Sinclair had submitted his proposition that no lease of Teapot Dome or any part of it was contemplated. A few oil companies who somehow heard of a possibility that the reserve would be leased applied for information but were given only partial information. No real opportunity to bid or to acquire the claims which had to be conveyed to the Government and which Sinclair had already acquired was given to any other applicant. The transaction was closed by private negotiation, shrouded with the utmost secrecy including even an order to subordinates in the Interior and Navy departments that such information as they had should be carefully kept secret. Secrecy was observed in order to prevent competition and to avoid interference by Congress.

Neither Fall nor Sinclair were called to the witness stand by Petitioners to explain any of these badges of fraud and conspiracy. All of the foregoing circumstances and the silence of those charged with bad faith were taken into consideration by the Court of Appeals in its conclusion. It says in its opinion (Record, p. 828):

> "In the transaction of public business there is no necessity for scheming, deception or double dealing, nor unless in well-recognized, exceptional matters,—for secrecy. There was no legitimate reason for such secrecy as was thrown around this transaction. Secrecy is an aid to corruption—publicity its foe. If the secrecy was not to veil an ulterior purpose it was, at least as to Congress, to ward off any investigation until after the leasing was completed."

The Court of Appeals considered another evidence of fraud and conspiracy which requires separate treatment. Counsel for Respondent contended and the Court of Appeals found that shortly after the first lease of April 7, 1922, and before the supplemental agreement of February 9, 1923, to wit, on May 29, 1922, and as a part of the conspiracy agreement Sinclair gave Fall $230,500 in the form of United States Liberty Bonds. The proven facts with respect to this bond transaction are that Sinclair, among others, was present at conferences during which Col. A. E. Humphreys and corporations owned by him, sold $50,000,000 worth of oil to the Continental Trading Company, Ltd., a Canadian corporation, on November 17, 1921, with a guarantee of payment by, *inter alia*, Sinclair in behalf of the Sinclair Crude Oil Purchasing Company. Concurrently therewith, on November 17, 1921, said Continental Trading Company, Ltd., sold all the oil so purchased to the Sinclair Crude Oil Purchasing Company, Sinclair executing the contract for his company, and to the Prairie Oil and Gas Company, at a sure profit of $8,333,333.00 Did Sinclair sit in on all this performance and see his company contribute to such a huge profit without sharing in it? The profit was invested in United States Liberty Bonds as it accrued. With $6,000,000 sure profit yet to

accrue, on May 26, 1923, the Continental Trading Company, Ltd., assigned the Humphreys contract to the Sinclair Crude Oil Purchasing Company and the Prairie Oil and Gas Company for only $400,000. The Continental Trading Company's only business operation was thereby closed and on August 9, 1923, it went out of existence and its books were destroyed.

On May 8, 1922, H. S. Osler, nominal President of the Continental Trading Company, Ltd., received $300,000 in Liberty Bonds, $250,000 of which are identified by number by evidence in the record as including the same $230,500 worth of Liberty Bonds proven to have been in the hands of M. T. Everhart, Fall's son-in-law, on May 29, 1922. Everhart was shown by the evidence to have deposited part of them in banks for the account of Fall and to have used the remainder of them for the payment of debts of Fall. On May 26, 1923, Sinclair gave Fall $25,000 worth of Liberty Bonds.

Everhart refused to testify claiming so to do might incriminate him. Osler and his clerks, the other nominal officers of the Continental Trading Company, Ltd., refused to testify, claiming their information was gained as attorney from client. Fall and Sinclair were not called as witnesses. All others present at the negotiations with Humphreys and knowing anything about the Continental Trading Company affairs were "either conveniently absent from the country or strangely and eloquently silent." (C. of A. Op., R. 838.) As stated above, the books of the Continental Trading Company, Ltd., were destroyed.

It is said in the opinion of the Court of Appeals (Record, pages 846-847):

> "While no isolated fact, circumstance or presumption in the case and no particular inference

may be sufficient to establish Sinclair's connection with the receipt of bonds by Fall or Everhart, yet taking the entire record of what was done, and all the inferences properly to be drawn therefrom, the fact is sufficiently established that the bonds in the possession of Everhart and used in part for Secretary's Fall's benefit were received by Everhart either from Sinclair or the Continental Trading Company, Ltd. That Company, we have pointed out, is shown to have been the agent of Sinclair, Blackmer, O'Neil and Stewart. * * * The reasonable, proper and natural inferences and presumptions from the accrual of condemnatory incidents appearing in this record supply the so-called missing links in the testimony and satisfy us of Sinclair's connection with the Continental Trading Company, Ltd., and with the acquisition of the Government Liberty Bonds by Everhart and Secretary Fall. **A trail of deceit, falsehood, subterfuge, bad faith and corruption, at times indistinct, but nevertheless discernable, runs through the transactions incident to and surrounding the making of this lease. It should not receive the approval of the Courts.**"

From all these circumstances, **including the way the lease and contract were negotiated and the silence and evasiveness of witnesses**, the Court of Appeals had no difficulty in inferring the bonds came from Sinclair. That was not building one presumption upon another. It was making a single inference from many proven circumstances all pointing one way.

Furthermore, it has been held by the Eighth Circuit Court of Appeals that an inference from even disconnected circumstances is not building one presumption upon another. *Cooper vs. United States* (1925), 9 Fed. (2d) 216.

Special Counsel firmly believe the inference of the

Court of Appeals as to bribery was warranted by the evidence. It is contended by counsel for Petitioners, however, that part of the evidence of bribery was inadmissible. The admissibility of such evidence is considered presently. However, the conclusion of the Court of Appeals that there was fraud and conspiracy to defraud, was based upon all the facts we have related. Therefore, since the Petitioners assign no error based upon other proof of fraud and conspiracy to defraud relied upon by the Court of Appeals and proven by evidence in the record, Petitioners are not entitled to a review of the other evidence of fraud, and such fraud being therefore conceded so far as the present appeal is concerned, the question of bribery becomes moot.

For the reasons just stated it is immaterial whether the evidence relied upon to identify the bonds was admissible. However we will point out briefly why the Court of Appeals correctly held it was admissible. The evidence objected to and stricken from the record by the trial court was entries made in regular course of business in the books of New York banks and bond houses and Colorado, New Mexico and Texas banks and other corporations or business houses as to the identity, source and disposition of the bribe bonds. The trustworthiness of practically all of the entries was verified by the entrants or by officers having supervision of the books. As the trial court and the Court of Appeals held, only a small part, if any, of the evidence was hearsay. However, the trial court held all of it was *res inter alios acta* under an old decision of the Eighth Circuit Court of Appeals, *Commissioners vs. Keene, etc., Bank*, (1901), 108 Fed. 505. That court in the instant suit held the evidence was

not *res inter alios acta*, and if necessary it must be concluded reversed the decision upon which the trial court relied, and followed the weight of authority. It was not *res inter alios acta* because it was the most direct evidence possible of a collateral fact at issue. Direct evidence of a collateral fact at issue is never *res inter alios acta*. This evidence is not within the prohibition of the Commissioners vs. Keene Bank case.

It must be concluded upon the questions of fraud and conspiracy to defraud that the assignments of error of the Petitioners touch but a single among the many grounds relied upon by the Court of Appeals, and that as to the ground touched by the assignments of error the Court of Appeals made no mistake, drew no inference from any other inference or rebuttable presumption and applied the rules of law contended for by counsel for Petitioners, pages 59 to 64 of their brief. There is, therefore, no reason for this Court to review the evidence.

**B. Was there authority of law to make the said lease and the said supplemental agreement and were they made in compliance with law?**

From what has been said it sufficiently appears that the lease and contract involved in this suit were really made in behalf of the United States by the Secretary of the Interior; that they involved the acquisition by the United States of fuel depots and supplies and equipment; that such acquisition was without express direction of Congress and without competitive bidding; and that they diverted proceeds of the sale of United States property away from the Treasury.

Whether the Act of June 4, 1920, authorized such contracts made in such a way is the same question that

is now before this Court in the said Pan American Petroleum and Transport Company appeal. It was so stated by the Court of Appeals in its opinion (Record, page 816), "With great respect for the ability and learning of that distinguished Court (9th Circuit Court of Appeals), we find ourselves unable to arrive at the same conclusion as to this lease and contract. That case is now in the Supreme Court of the United States and **this legal question** will there be settled."

The conclusion of the Court of Appeals on this branch of the case was favorable to Petitioners and against the theory of Respondent, yet Petitioners assign error (Fourth Assignment, Petitioners' brief p. 31) to a refinement in the Court's reasoning toward the conclusion. The ultimate conclusion makes the refinement hypothetical and moot.

Any public policy requiring the determination of this question will be fully satisfied by the decision of this Court in said Pan American Petroleum and Transport Company appeal. Thereafter there will be no conflict between decisions of the two Circuit Courts of Appeal requiring determination by this Court in the interest of uniformity. *Magnum Co. v. Coty*, (*1932*), 262 U. S. 159, p. 163. No right of the Petitioners requires consideration of that question unless this Court also desires to go into the questions of fraud and conspiracy.

**C. Must the Petitioners cease to trespass upon Teapot Dome and account for all petroleum products taken therefrom without credit for their expenditures?**

Mammoth Oil Company is a *mala fide* trespasser because it is a creature of Sinclair who was guilty of

fraud and one of the conspirators for the fraudulent procurement of the lease and contract. The Sinclair Pipe Line Company and the Sinclair Crude Oil Purchasing Company are also constructively *mala fide* trespassers and are chargeable with notice of the fraud practiced by Sinclair and his Mammoth Oil Company, their assignor, in procuring the said lease and contract. Sinclair was Chairman of the Board of Directors of the Sinclair Consolidated Oil Corporation, its largest stockholder and appointed its officers including his brother as President (testimony of Stanford and Minutes of a meeting of the Board of Directors of Sinclair Consolidated Oil Company, September 13, 1922; R. 551-2; opinion of Cravath, Henderson, Leffingwell and de Gersdorff, attorneys for Sinclair Consolidated Oil Corporation, R. 560, all being evidence offered by Petitioners). The Sinclair Pipe Line Company and the Sinclair Crude Oil Purchasing Company were each owned one-half by Sinclair Consolidated Oil Corporation and one-half by Standard Oil Company of Indiana (R. 676, 559, 457). Sinclair was a director of and controlled the Sinclair Crude Oil Purchasing Company as appears from his and its part in the Humphreys-Continental Trading Company transaction (R. 448). Considering the way the consent of Fall to the assignment to Sinclair Pipe Line Company was negotiated by Sinclair and that it was subsidiary of Sinclair Consolidated Oil Corporation it is fair to assume that Sinclair was also a director of and in control of Sinclair Pipe Line Company.

Since the decision of this Court in the case of *Pine River Logging Co. vs. United States* (*1902*), 186 U. S. 279, the law has been that a *mala fide* trespasser upon the public domain must account for the full market

value of the minerals extracted therefrom and is never reimbursed for his costs of extraction thereof or for his permanent improvements. This very question of law was raised in the Pan American case, was there settled in favor of the Government, and will be again considered in the pending appeal of the Pan American Petroleum & Transport Company and the Pan American Petroleum Company.

Even if it be found that the Sinclair Crude Oil Purchasing Company and the Sinclair Pipe Line Company are not chargeable with notice of the fraud and conspiracy to defraud practiced by Sinclair and his Mammoth Oil Company in the procurement of the instant lease, still they would remain trespassers and would have to cease trespassing since they derive their rights under a lease voidable for fraud and now so avoided by decree of court. In such event they cannot demand that the owner of the property upon which they are trespassing should reimburse them for their improvements as a condition precedent for their ceasing to trespass upon the public domain. They are entitled to remove their tools and other movable fixtures and improvements. The order of the Court of Appeals does not preclude them from applying to the trial court for leave to remove such of their property as has not become permanently affixed to the realty. The *mala fides* of the Mammoth Oil Company being established, it must account for the full value of the oil and other petroleum products of the Reserve, and may not claim reimbursement for its cost of extraction or for its permanent improvements.

## III. CONCLUSION.

Petitioners finally claim their cause is of much public importance because it involves charges of bribery of a Cabinet officer and a preservation of the rules of evidence that this Court should review it on its merits (Petition, pp. 23, 24). What has been said *supra* shows that the decision of the Court of Appeals preserves the rules of evidence in accordance with the well settled weight of authority. The interest of the public in the charges of bribery against the Cabinet officer will be fully served in his trial and the trial of Mr. Sinclair under pending indictments.

For the foregoing reasons it is respectfully submitted none of the grounds set forth in the rules of this Court or its decisions for the granting of writs of certiorari exist in this cause and it is respectfully suggested that the petition should be dismissed.

Respectfully submitted,

ATLEE POMERENE,
OWEN J. ROBERTS,
*Special Counsel.*

*We acknowledge receipt of copies of the foregoing brief on December ——, 1926.*

*Solicitors for Mammoth Oil Company.*

*Solicitors for Sinclair Crude Oil Company and Sinclair Pipe Line Company.*